

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CONVENTION OF STATES ACTION,

Plaintiff,

vs.

NS CONSULTING, LLC,

Defendant.

8:22CV126**ORDER**

Plaintiff filed a Motion for Partial Summary Judgment ([Filing No. 46](#)) on August 2, 2023. Following an extension of time due to an illness on the part of Defendant's counsel, Defendant filed a brief in opposition to Plaintiff's motion on September 20, 2023. ([Filing No. 53](#).) Defendant filed a statement of uncontroverted and controverted facts in opposition to Plaintiff's motion on September 21, 2023. ([Filing No. 55](#).) On September 21, 2023, Defendant also filed an index of evidence which attached the deposition transcript of Andrew Northwall. ([Filing No. 54](#).) Plaintiff filed a reply brief ([Filing No. 56](#)) and statement of responses to Defendant's statement of facts ([Filing No. 57](#)) on October 4, 2023.

Federal Rule of Civil Procedure 56(e)(1) provides that, "[i]f a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may . . . give an opportunity to properly support or address the fact." [Fed. R. Civ. P. 56\(e\)\(1\)](#). See also Fed. R. Civ. P. 56 committee's note, 2010 Amendments, Subdivision (e) ("[S]ummary judgment cannot be granted by default . . . [particularly] when an attempted response fails to comply with Rule 56(c) requirements . . . Before deciding on other possible action, subdivision (e)(1) recognizes that the court may afford an opportunity to properly support or address the fact. In many circumstances this opportunity will be the court's preferred first step."); NECivR 56.1(e) ("If a party files a statement of material facts, statement of additional material facts, or brief that does not comply with this rule, the court may require immediate compliance or provide any other relief that the court deems appropriate").

It appears to the Court that Defendant may not have properly supported its assertions of fact or properly addressed Plaintiff's assertions of fact. Therefore, to the extent Defendant believes

that its assertion of facts in opposition to Plaintiff's summary judgment motion are not properly supported or presented to the Court in a proper form, the Court, pursuant to Rule 56(e)(1), grants Defendant **until December 20, 2023** to file a supplemental response to the summary judgment motion, and Plaintiff may file a supplemental reply **no later than January 3, 2024**.

IT IS SO ORDERED.

Dated this 6th day of December, 2023.

BY THE COURT:

s/ Susan M. Bazis
United States Magistrate Judge